JURISDICTION.

The United States Supreme Court's jurisdiction is invoked upon the basis of the provisions of Title 28, United States Code, Section 1254 (1). It is a plea under the Fourteenth Amendment of the United States Constitution providing for DUE PROCESS OF LAW to sustain the individual and property rights of a citizen of the United States and prevent confiscation by the Municipality.

The Court's jurisdiction is also invoked under Title 28, U. S. Code, Section 1253.IV-109, which provides that the United States Supreme Court can take notice of a record in a prior case taken to the State Supreme Court involving the same subject matter. The rehearing sought by petitioner was denied by the Court January 11, 1960. Thus this petition is presented within the time prescribed for applying therefor by Title 28, U. S. Code, Sec. 2101 (c).

CONSTITUTIONAL QUESTIONS PRESENTED FOR REVIEW.

1. Did the State Supreme Court of Missouri exceed its jurisdiction when it affirmed the Circuit Court's Finding that the homestead which appellant owned in fee simple under the Sheriff's deed should no longer be hers, but should henceforth become the property of the Municipality in which she lived, at whose instigation a public sale was held in the foreclosure of a judgment in rem, at which she was the highest bidder and purchaser?

2. Should it be possible for a citizen's property to be taken away from her by an inferior executive body (a municipality) without any notice, and without any compensation, without violating Due Process of Law?

3. Did the Circuit Court of St. Louis err in Cause 46,113-D, 300 S. W. 2d 442, in refusing (Tr. 66) to sustain her Motion (Tr.—64) to Dismiss Defendant's Cross-Bill

claiming title in the City under the so-called Collector's Deed to THE CITY from the Brussells, which pointed out that the City Attorney had falsely sworn in his Cross-Bill, signed by Notary Perry F. Voelker, December 26, 1951 (Tr. 19), that plaintiff claims some interest, the nature of which is unknown to the defendant? This statement was material to the issues of the case as appellant was a stranger to the suit, City of St. Louis v. Gottschall, Brussel, et al. See Index 1, Appellant's Brief, No. 47,456 under which the title interest of all these parties was sold to appellant, as previously held by the Missouri State Supreme Court in K. C. Ex. v. Kansas City, 174 Mo. 425; 74 S. W. 979, and provided by Section 1748, R. S. Mo. 1939, passed by the State Legislature:

> "A City and its officers and agencies are bound by the judgment in an action in which it is a party or privy," and "The Sheriff's deed . . . shall be a bar against all persons interested in such premises and against all persons claiming from such parties or either of them."

It may be noted here that the City Attorney refused to sign the Transcript in the case (Tr. 83) filed September 13, 1956, but it was signed by the Judge.

4. While reversing and remanding the case, did the Missouri State Supreme Court err in its Opinion reported in 300 S. W. 2d 442, that appellant's contention in this equity suit as to the perjury was without merit when appellant's Sheriff's Deed is given in the Transcript, pages 24 to 32, and the City's Collector's Deed from Joseph and Kreszentia Brussel et al. on pages 33 to 37, inclusive, was filed as a part of plaintiff's REPLY? (Tr. 19-37.) The Sheriff's Deed shows (Tr. 25) the Execution, No. 295, Plaintiff's Exhibit 2 (Tr. 38, 63a, 63b, 63c), was issued at the request and in favor of the City of St. Louis; the Collector's Deed (Tr. 37) witnessed by William Baumann, the

City Collector, Louis Nolte, the City Comptroller, and attested by Ray C. Schroeder, Registrar of the City, but not signed by H. Sam Priest, the Clerk of the Court, sworn to before Jane Lindsay, Notary Public, that the Collector's Deed was

> "a true copy of an instrument of writing executed by Joseph and Kreszentia Brassel, by Collector to the City of St. Louis."

5. Should the State Supreme Court of Missouri have found from a study of Plaintiff's Transcript filed September 13, 1956, as above set out,

> THAT APPELLANT IS VESTED WITH FEE SIMPLE TITLE UNDER THE SHERIFF'S DEED; THAT THE CITY ATTORNEY IS GUILTY OF PERJURY, THAT THE CITY THROUGH ITS LEGALLY CONSTITUTED OFFICIALS IS GUILTY OF TRESPASS AND OWES APPELLANT TREBLE DAMAGES FROM THE DATE OF SEIZURE OF HER PROPERTY, FOR RAZING AND HAULING AWAY HER 14 ROOM BRICK BUILDING, AMOUNTING TO A TOTAL VALUATION OF $28,500.00; THAT THE CITY IS REQUIRED TO MAKE A LEGAL TAX ASSESSMENT ON THE SAID PROPERTY BY RECORDING HER NAME AND PROPERTY ON THE TAX ASSESSOR'S PLAT BOOK; THAT THE CITY'S CROSS-BILL BE DISMISSED WITH PREJUDICE?

6. Can the Executive Branch of Government, a Municipality, by securing a Judgment of a Circuit Court, affirmed by the Supreme Court, the Highest judicial power of the State, trespass on a citizen's property, demolishing it, with impunity, when the Legislative Branch has expressly provided TREBLE DAMAGES in Sec. 3681, R. S. Mo. 1939, without violating the constitutional provisions of DUE PROCESS OF LAW of the STATE and FEDERAL CON-

STITUTIONS and the decisions of the United States Supreme Court in Appleby v. Buffalo, 31 U. S. 702, and Chi., Burl. & Quincy R. R. Co. v. Chicago, 166 U. S. 226, and Art. V, Sec. 3 of the Constitution of Missouri?

7. Can a Municipality cure the inadequate description in a Collector's Deed (Tr. Cause 45,724, p. 34) to conform to the description in the Sheriff's Deed (Tr. Cause 45,724, p. 25) without violating DUE PROCESS OF LAW, by securing a Circuit Court Judgment affirmed by the State Supreme Court (Tr. Cause 47,456, p. 67) describing appellant's property as shown in her Sheriff's Deed and decreeing that respondent City of St. Louis is vested with fee simple title to it? Again, the City Attorney, in filing his motion to dismiss appellant's petition (Tr. Cause 45,724, p. 8), stated that another suit between the same parties and involving the same subject matter, Cause 75,398-C in this Court and which is now pending on appeal in the Missouri Supreme Court, being No. 42,640, filed July 3, 1951. Appellant asserts the number is NOT 42,640, but is No. 39,785, as shown on the Transcript of that case filed herein. It is in that case that the Declaratory Judgment was rendered as shown on page 8, and was dismissed without prejudice by the Circuit Court, and merely dismissed by the Supreme Court before Cause 45,724 was brought.

"The sale of the property in Count 13 is invalid as to the City of St. Louis and certificate of title, No. 1482, null and void."

Again, the City Attorney in their Cross-Bill filed December 26, 1951, gave the description of appellant's property (Tr. 45,724, p. 15) instead of the description as shown in respondent's Collector's Deed, falsely before P. Voelker, claiming under oath September 19, 1957 (Tr. 18) that it acquired fee simple title to above described real property. This was clearly a false oath so that the Judge might be

induced to use this description of the property as given in appellant's Sheriff's Deed in case he saw fit to exceed his jurisdiction by overruling the above Declaratory Judgment finding that the Collector's Deed was null and void; and instead find fee simple title in THE CITY under the Collector's Deed. This the Court did in its Judgment (Tr. 46,456, p. 67) dated November 7, 1958. Appellant's motion to dismiss the cross bill should have been sustained. Appellant's only recourse is an appeal to the UNITED STATES SUPREME COURT as the Missouri State Supreme Court affirmed the Circuit Court December 14, 1959, and Appellant's Petition for Rehearing was denied January 11, 1960.

STATUTES, FEDERAL RULES AND REGULATIONS INVOLVED.

Cases Cited.

Evans v. City of St. Louis, 355 Mo. 790, 198 S. W. 2d 9. See Transcript introduced as plaintiff's evidence;

Evans v. Brussel, City et al., 300 S. W. 2d 442, 443, 444;

Pettus v. City of St. Louis, 242 S. W. 2d 723-6 and 7 and 729. Plaintiff may be able to establish title, notwithstanding the tax deed to defendant City;

Knight v. Rawlings, 205 Mo. 412; Statute of Frauds;

Evans v. Buente, 284 S. W. 2d 543;

Costello et al. v. City of St. Louis, 262 S. W. 2d 596;

Mrs. S. Aronoff v. City of St. Louis, 7-14-59. Got Judgment for the illegal demolition of flat No. 45,768, Mo. S. Ct. No. 91,588-D, St. L. Ct. Ct.;

City of St. Louis v. Baumann (the Collector), 153 S. W. 2d 31;

St. Louis Housing Authority v. Evans and the City of St. Louis, 285 S. W. 2d 550;

City of St. Louis v. Wenneker, 145 Mo. 270, 47 S. W. 105;

Hannibal ex rel. v. Bowman, 71 S. W. 1122. Assessor must follow statute.

United States Cases and Statutes Cited.

XIV Amendment of the U. S. Constitution. Due Process of Law;

Art. 1, U. S. Const. Right to Petition;

Art. 1, Sec. 30, Constitution of Missouri, 1945. Due Process of Law Required;

Art. 3, Sec. 2, Clause 2, U. S. Con. Appellate Jur. of the law and the fact;

Art. 5, Sec. 3, Constitution of Missouri, 1945. Jurisdiction of Supreme Court;

Art. 6, Sec. 1, Clause 2. Judges in every state bound by Constitution of United States;

Title 28, U. S. Code, Sec. 1254 (1);

Title 28, U. S. Code, Sec. 1253 IV-109. Can take notice of a prior case taken to the State Supreme Court involving the same subject;

Title 28, U. S. Code, Sec. 2101 (c). Prescribes time for applying for the Writ;

Appleby v. Buffalo, 31 U. S. 702;

Chicago, Burlington and Quincy R. R. v. Chicago, 166 U. S. 226;

Kansas City Ex. v. Kansas City, 174 Mo. 425; 74 S. W. 979.

Missouri Civil Statutes.

Sec. 527.150, R. S. Mo. 1949. Petition states a cause of action. Both are entitled to declaratory judgment under petition;

City Charter. The 1930 judgment prior to all other liens thereon;

Sec. 512.160, R. S. Mo. 1949. Empowers the Supreme Court to give such judgment as such Circuit Court ought to have given;

Sec. 3354, R. S. Mo. 1939. No action shall be brought to charge any person to answer for default of another;

Sec. 478.100, R. S. Mo. 1949. St. Louis is in 8th Circuit;

Sec. 432.010, R. S. Mo. 1949. Statute of Frauds;

Sec. 3681, R. S. Mo. 1939. Trespass on realty treble damages;

Sec. 137.535, R. S. Mo. 1945, page 1859, par. 17. Assessor shall make daily record;

Sec. 1748, R. S. Mo. 1939. THE SHERIFF'S DEED IS A BAR TO ALL PERSONS INTERESTED IN THE PREMISES;

Sec. 3351, R. S. Mo. Contract void which limits time to bring suit;

DECLARATORY JUDGMENT ACT, ART. 14, SEC. 1126, p. 218, Par. 1 of the Laws of 1935;

Sec. 10,973, R. S. Mo. 1939. Assessor shall enter names and description on the plat book;

Sec. 10,984. Assessment of land by plats as provided by Sections 10,971 and 10,972 shall be taken in all Courts to impart notice to the owner—that it is assessed and liable to be sold for taxes.

Missouri Criminal Statutes.

V. A. M. S. 557.010. What constitutes Perjury;

V. A. M. S. 557.020. Punishment. Penitentiary not exceeding 7 years;

V. A. M. S. 557.030. Indictment;

V. A. M. S. 558.150. Collecting illegal taxes, a misdemeanor;

Secs. 4490 and 4491, R. S. Mo. 1939. Executing a second deed fraudulently.

SHORT STATEMENT.

1. Appellant Evans was **purchaser** when THE CITY foreclosed its judgment in a condemnation suit. **City v. Gottschall, Brussell et al.**, No. 71-527-B. Within 11½ months THE City bought Certificate of Title No. 1482.

2. In Evans v. City of St. Louis, No. 39,785, declaratory judgment, November 5, 1945 (Tr. 45), 355 Mo. 790, 198 S. W. 29, dismissed without prejudice.

"The sale of property in Count 13 is invalid as to the City of St. Louis and certificate of title No. 1482 void for bad description in advertisement in Daily Record."

3. In Evans v. Brussel, City et al.; No. 46,113-D, Supreme Ct. No. 45,724, 300 S. W. 2d 442, appellant setting out her title under the Sheriff's Deed filed suit to clear title under Sec. 527.150, naming all parties to the condemnation suit (Sec. 1684, R. S. Mo. 1939) as parties defendant.

4. THE CITY filed cross-bill, falsely swearing (1) that they had no knowledge of the source of appellant's title, and (2) claiming title to property as described in appellant's Sheriff's Deed, but not as described in THE CITY'S Collector's Deed, the only evidence of respondent.

5. Plaintiff filed motion for Order to show cause for committing a perjury (Tr. 64). Instead of dismissing the cross-bill the Court overruled it then ruled on an old motion to dismiss plaintiff's petition and sustained it. In her reply she had attached copies of the Sheriff's Deed and the so-called Collector's Deed based on Certificate 1482 *which had already* been declared void.

6. The Supreme Court reversed and remanded the case.

7. THE CITY filed an amended cross-bill but gave the description in appellant's Sheriff's Deed, falsely swearing that they had fee simple title to it instead of giving either description in the Collector's Deed, neither of which adequately described appellant's property. Thus a judgment was secured finding fee simple title to appellant's property which the Missouri State Supreme Court has affirmed.

8. THE CITY slandered appellant claiming she never paid her taxes when the evidence shows in Cause 39,785

that THE CITY continued to refuse to comply with the assessment laws of the State and never transferred her name nor description of her property on the Tax Assessor's Plat Book, a fundamental requirement for a valid tax assessment, although duly recorded.

SUMMARY WITH REASONS FOR ALLOWANCE OF THE WRIT.

This is a PLEA to sustain the individual and property rights of a citizen of the United States, under the FOURTEENTH AMENDMENT of the U. S. CONSTITUTION, providing for DUE PROCESS OF LAW.

By judgment of the Circuit Court, the Brussels, the former owners of a certain piece of property, located on the northwest corner of Ninth and Rutger, were duly served and defaulted, leaving the Appellant and the City of St. Louis, hereafter called THE CITY, the only parties at interest.

The Supreme Court of Missouri in its final judgment dated January 11, 1960, by its ruling, has divested appellant of her title acquired by Sheriff's Deed to the property and building thereon, and without any compensation, and has found that fee simple title is vested in THE CITY free of any liens in violation of Sec. 1748, R. S. Mo. 1939, which provides that the Sheriff's Deed, of record in the case, when duly approved and recorded, shall be a bar against all parties to the suit, the CITY and the Brussels. In so doing THE CITY and the Supreme Court have denied to Appellant DUE PROCESS OF LAW to which she is entitled under Fourteenth Amendment of the Federal Constitution. After duly selling appellant this property December 24, 1936, which appellant recorded March 22, 1937, THE CITY bought a Collector's certificate of purchase, No. 1482, and thereafter secured a deed from the Brussels by Collector, which THE CITY claimed was a

transfer of Appellant's title to the Appellee. In the affirmance of this by the Supreme Court of Missouri, both THE CITY and THE COURT have ignored the fact that an adjudication by the St. Louis Circuit Court that the Certificate of Purchase, No. 1482, on which the Collector's Deed was based, was null and void for improper advertisement in the Daily Record. The DECLARATORY JUDGMENT ACT, R. S. Mo. 1939, Art. 14, Sec. 1126, provides, "Such declaration shall have the force and effect of a FINAL JUDGMENT OR DECREE." This constitutes another flagrant violation of Appellant's right to DUE PROCESS OF LAW. The invalidity of the Collector's Deed to the CITY was already res adjudicata.

The United States Supreme Court has held in the case of Chicago, Burlington & Quincy R. R. Co., 166 U. S. 581, Item 4, "In our Opinion, a judgment of a state court, even if it be authorized by Statute, whereby private property is taken for the State, or under its direction for public use, without compensation made or secured to the owner, is upon principle and authority, wanting in due process of law required by the Fourteenth Amendment of the Constitution of the United States, and the affirmance of such judgment by the highest Court of the State is a denial by that state of a right secured to the owner by that instrument." Quoted in Appellant's Brief in Cause No. 45,724, p. 7. See Miller Bros. Co. v. State of Md., 74 S. Ct. 535, 347 U. S. 340; See Key 319 on Confiscation, cited on page 6 of Appellant's Motion to Transfer to Court en Banc.

The Supreme Court's affirmance of the trial Court's ruling that the **Collector's Tax Deed** from the Brussells to THE City, Respondent's Appellee's Exhibit A, Tr. 46, **conveyed Appellant's title to the City** (Tr. 67), with the resulting ruling that Appellant **"fails to establish any estate, title, rights, interest, claims, liens and demands in and to SAID real estate,"** thus depriving her of any judgment for the $28,500.00 demanded, or any reimbursements for

money expended on it, or damages for trespass, and assessing all costs against her, charging her property as described in Appellant's Sheriff's Deed, for the debt for delinquent taxes due from the Brussells (Appellant's Ex. 2, Tr. 27). This is a violation of Sec. 3354, R. S. Mo. 1939, which provides:

> "No action shall be brought—to charge any person to answer for the debt, default—of another—or upon any contract made for the sale of lands, tenements—or an interest in and concerning them, unless the agreement—shall be in writing, and signed by the party to be charged therewith—"

The Circuit Court's finding affirmed by the Missouri Supreme Court, that Appellant is barred by a three year statute of limitation, is groundless, as shown on the Sheriff's Deed. Sec. 3351, R. S. Mo. 1939, provides:

> "All parts of any contract—made or entered into which either directly or indirectly—tend to limit the time in which any suit or action may be instituted, shall be **null and void.**"

The only contract between appellant and appellee is the Sheriff's Deed which has been adjudicated by the Circuit Court to have conveyed fee simple title to Appellant, together with all appurtenances. There is no time limit to enforce its provisions. Under Art. 3, Sec. 2, Clause 2, Constitution of the U. S., the **United States Supreme Court has appellate jurisdiction as to law and facts.**

The Sheriff's sale to appellant was held at the request of the CITY, hence THE CITY had actual knowledge of the source of appellant's title (see the advertisement on back page of the Sheriff's Deed). Hence the CITY'S COLLECTOR'S deed was a fraudulent conveyance, and its officials were guilty of executing a second deed fraudulently under Secs. 4490 and 4491, R. S. Mo. 1939.

JUDGES IN EVERY STATE ARE BOUND BY THE CONSTITUTION OF THE U. S. (See U. S. Const., Art. 6, Sec. 1, Clause 2.) A CITIZEN'S RIGHT TO PETITION SHALL NOT BE ABRIDGED. U. S. Const., Art. 1.

The evidence adduced and the previous judgments of the Courts rendered in the determination of the ownership of the individual and property rights of Appellant, a teacher for more than thirty years in the High Schools of Appellee THE CITY, admitted to practice law in the State of Missouri in 1913, and in the Federal Court and United States Supreme Court, indicate that **Appellee has seized Appellant's property on 9th and Rutger**, St. Louis, Missouri, and torn down her brick building thereon WITHOUT NOTICE or WITHOUT ANY COMPENSATION, WITHOUT ANY LEGAL TAX ASSESSMENT, UNDER THE PRETEXT OF TAXATION, WITHOUT DUE PROCESS OF LAW; that this could be accomplished because the judge in Cause No. 46,113-D of the Circuit Court exceeded his jurisdiction, by **reversing** the declaratory judgment previously made that the COLLECTOR'S DEED COULD CONVEY NO TITLE TO THE CITY which was affirmed by the Supreme Court in the case at bar, thus leaving Appellant with a judgment that her Sheriff's Deed is valid, but without any property, and liable for costs. All of this grew out of the CITY'S sale to her.

Since the State Courts have **exceeded their jurisdiction** without DUE PROCESS OF LAW, appellant must rely on the U. S. Supreme Court to review THE LAW AND THE EVIDENCE, and give appellant the relief to which she is entitled. The five previous judgments above mentioned are as follows:

(1) In Cause No. 71,527-B in the Circuit Court, **The City of St. Louis v. Gottschall, Brussel et al.**, the Court found that the SHERIFF'S DEED TO EVANS FOR ALL RIGHT, TITLE, INTEREST, CLAIM, ESTATE AND

PROPERTY SET OUT IN ITEM 78 (Pl. Ex. 3; Tr. 30) of the JUDGMENT; this certificate of acknowledgment being ordered by the said Court to be endorsed by the Clerk on this deed and entered on the records of said Court in Book 522, page 468, of the City of St. Louis. (See Tr. in Cause No. 46,113-D, Supreme Court, Pl. Ex. 4, page 33, photostatic copy of house destroyed, attached.) The Sheriff's Deed shows on its face that it was recorded March 22, 1937, but the evidence in above Cause No. 71,527-B introduced in Plaintiff's Exhibit 5, page 43, being the Tr. in No. 39,785-C in the Supreme Court of Missouri shows in the AGREED STATEMENT OF FACTS signed by Evans and attorney for THE CITY, that neither the DESCRIPTION OF THE PROPERTY nor EVANS, the new owner of record, had ever been entered on the Tax Assessor's Plat Books, as required under Secs. 10,971, 10,972 and 10,973, which imparts notice to the owner that it is assessed and liable to be sold for taxes. Appellant has thus been denied of her right to DUE PROCESS OF LAW.

(2) In Cause No. 46,113-D, Circuit Court, Evans v. Brussel, City of St. Louis et al., the Court found that the Sheriff's Deed (see photostatic copy, Pl's Ex. 4) VESTED FEE SIMPLE TITLE IN APPELLANT December 24, 1936. However the Court EXCEEDED IT'S JURISDICTION in thereafter finding that the Collector's Deed transferred the title thereafter to Appellee as such a finding was a reversal of the Finding of the Court in Cause No. 39,785, Supreme Court, entitled Evans v. City of St. Louis, "THE SALE OF THE PROPERTY IS INVALID AS TO THE CITY OF ST. LOUIS, and THE CERTIFICATE OF PURCHASE, No. 1482, VOID. The Collector's Deed shows on its face that it was issued on this Certificate of Purchase, No. 1482. This finding was in response to Appellant's MOTION FOR A FINDING OF FACTS AND LAW as provided in the Equity Statute under the DECLARATORY JUDGMENT ACT, R. S. Mo., 1939, Art. 14, Sec. 1126 (see Pl. Ex. 5, Tr. 43, pp. 17, 18, 19, Count 13):

"Courts shall declare rights, status and other legal relations—and such declaration shall have the force and effect of a FINAL JUDGMENT."

(3) In Cause No. 45,724, Supreme Court of Missouri, 300 S. W. 2d 442, the Supreme Court reversed and remanded the judgment of dismissal in Cause No. 46,113-D of the Circuit Court, Evans v. Brussel, City of St. Louis et al., and found that the Petition states a Cause of Action under Sec. 527.150, R. S. Mo. 1949, which entitles both to a declaratory judgment of all rights, claims and liens. KNOWING that the CITY had sold this property to Appellant and that Appellant's name had not been transferred to the Assessor's Plat Book as required by law, the Attorney for THE CITY twice made an Affidavit that THE City was the owner of the appellant's property under the said Collector's Deed, one in THE CITY'S ANSWER and one in the RETRIAL of the Case, in violation of 557.030, V. A. M. S. (Indictment for perjury). This statement was material to the issue in the case of Appellant's rights, damages and claims under her Sheriff's Deed was a bar to any claims of the Brussels, the former owners, and THE CITY, *both parties to the* suit No. 71,527-B, in which Appellant was not a party. Thus the Appellant was denied EQUAL PROTECTION OF THE LAW and DUE PROCESS OF LAW under the United States Constitution and the Constitution of the State of Missouri. This was further evidenced by the fact that the City Attorney refused to sign the Transcript on Appeal in Cause No. 45,724. The Judge finally signed it. In the case of Williams v. Hayti, 194 S. W. 470, and K. C. Ex. v. Kansas City, 174 Mo. 425, the Supreme Court of Missouri found:

"A City and its officers and agencies are bound by the judgment in an action in which it is a party or privy," and "The SHERIFF'S deed . . . shall be a bar against all persons interested in such premises,

and against all persons claiming from such parties or either of them."

(4) Cause No. 75,398-C, Circuit Court, being No. 39,785 in the Supreme Court, entitled Evans v. City of St. Louis, declaratory judgments as to the law and the facts was rendered. The Court found that the Collector's Deed was invalid to convey any title to the CITY and HAD NEVER BEEN ENTERED on the Tax Assessor's book, a requirement for a valid assessment against Appellant's property.

(5) Cause No. 47,456, Supreme Court, entitled Evans v. Brussel, City of St. Louis et al., an appeal from No. 47,456 of the Circuit Court, has affirmed the trial court's ruling that the COLLECTOR'S TAX DEED (Respondent's Ex. A, Tr. 46, photostatic copy attached), CONVEYED APPELLANT'S TITLE TO THE CITY (Tr. 67) with the resulting ruling that appellant "FAILS TO ESTABLISH ANY ESTATE, TITLE, RIGHTS, INTEREST, CLAIMS, LIENS AND DEMANDS IN AND TO SAID REAL ESTATE" thus depriving her of the $28,500 claimed for reimbursements for money expended on it, or damages for trespass, for which Sec. 3681, R. S. Mo. 1939, allows treble damages, assessing all costs against her charging her property as described in her Sheriff's Deed for the debt for the delinquent taxes due from the Brussels.

THE COLLECTOR'S DEED SHOWS ON ITS FACE THAT IT CANNOT CONVEY APPELLANT'S TITLE TO THE CITY.

Under the LAW OF CONTRACTS, Sec. 3354, R. S. Mo. 1939, provides:

> "No action shall be brought—to charge any person upon any special promise to answer for the debt, default—of another person—or upon any contract made for the sale of lands, tenements, heriditaments—for a longer time than one year—unless the agreement upon

which the action shall be brought, or some memorandum—shall be in writing and signed by the party to be charged therewith, or some other person by him thereto lawfully authorized, and no contract for the sale of lands made by an agent shall be binding upon the principal, unless such agent is authorized in writing to make said contract."

Sec. 3351, R. S. Mo. 1939, provides:

"All parts of any contract or agreement hereinafter made or entered into which either directly or indirectly limit or tend to limit the time in which any suit or action may be instituted, shall be **null** and **void.**"

Sec. 3681, R. S. Mo. 1939, provides:

"If any person shall cut down—destroy—or carry away any tree—or any timber—or material being a part of the realty—shall pay to the party injured TREBLE DAMAGES."

As a municipal corporation is not liable for the lawful and authorized acts of its agents, the COLLECTOR'S TAX DEED must show affirmatively on its face that it conveyed APPELLANT'S TITLE to the CITY, from appellant's TITLE FROM THE CITY, acquired under her SHERIFF'S DEED. This requires an EXAMINATION OF THE CONTRACT between the two parties to this suit, as shown by the COLLECTOR'S DEED, the Appellee CITY'S Exhibit A (Tr. 46).

The SUBJECT of the suit is the property as described in the SHERIFF'S DEED, and the AMOUNT OF MONEY due appellant from respondent for illegal acts they committed relating thereto.

The description of the property in the **trial court's judgment** is the same as appears in the Sheriff's Deed, and

hence would convey appellant's property (Tr. 67) unless the Trial Court's Judgment affirmed by the Missouri Supreme Court is overruled by the Supreme Court of the United States as being in violation of the Constitution of Missouri, and the Fourteenth Amendment of the Constitution of the United States as being lacking in due process of law, because of the fact that **it does not correspond** with the **description of the property** set out in the COLLECTOR'S DEED, to-wit:

> "A parcel of land in City Block 466-E fronting 25 feet on Ninth Street by a depth of 100 feet." From this description one could not know if the lot was on the NE, SE, NW or SW corner, or if indeed it is at the corner of Ninth and Rutger.

The description as shown in the advertisement in the Daily Record was "LOTS S-19, 20, 21, in C. B. 466-E." This may be found in Cause 39,785, page 41, item 7, No. 13. It was on this bases that the Court found, "THE SALE OF PROPERTY IN COUNT 13 IS INVALID AS TO THE CITY OF ST. LOUIS, and CERTIFICATE 1482 is VOID FOR BAD DESCRIPTION IN ADVERTISEMENT IN DAILY RECORD" (Tr. Cause 39,785, p. 45, item 4). The void certificate of purchase is on the face of the Collector's Deed, No. 1482.

Another description of the property involved in this suit is given in the Collector's Deed, similar to that in Appellant's Sheriff's Deed, and in the Court judgment, but aftermentioning Lots 19 to 22, it fails to say BOTH INCLUSIVE: and after stating by a depth westwardly, it fails to state BETWEEN PARALLEL LINES. These omissions invalidate the descriptions.

PRAYER.

That it be adjudged and decreed that the above-named Appellant, Anne M. Evans, a single woman, is the lawful owner of said premises in fee simple, described as follows:

> "In the City of St. Louis, Missouri, a parcel of land in City Block 466-E, comprising the southern 25 feet of lots 19 to 22, both inclusive in block 5 of D. D. Page's Southern Addition, a subdivision, having a front of 25 feet on the west line of 9th Street (50 feet wide), by an aggregate depth between parallel lines, of 100 feet along the north line of Rutger Street (50 ft. wide) to lot 23 of said block and subdivision; bounded on the north by the property now or formerly of Frank A. Frankel et al."

And appellant is entitled to the lawful, peaceable and uninterrupted possession thereof as against the Defendant CITY herein, and all others whomsoever; and a money judgment of $22,500 for trespass on the property and wilful destruction and hauling away of her 11 room brick building, and money expended in roofing and repair, loss of rents, and for such other and further relief, as may be deemed just, together with the Costs of this action.

That the United States Supreme Court further finds that the Inferior Tribunal exceeded its Jurisdiction in the Circuit Court in finding the certified Collector's Deed of September 17, 1941 from Brussels to the CITY, issued on void certificate of title No. 1482 dated November 1, 1937, vested fee simple title in the City of St. Louis; that THE SUPREME COURT OF MISSOURI exceeded its Jurisdiction in affirming this finding.

That under the STATUTE OF FRAUDS, the said Collector's Deed could not convey the title vested in Evans under the Sheriff's Deed; that there is no limitation as to time in which the suit should be brought.

That appellant has not been accorded her rights to DUE PROCESS OF LAW under the Fourteenth Amendment of the Constitution of the United States nor under Art. V, Sec. 3 of the Constitution of Mo., both Courts having failed to follow the DECLARATORY JUDGMENT ACT Art. 14, Laws of Mo. 1935, p. 218, Par. 1, Sec. 1126, "Courts shall declare rights, status, and other legal matters—and such declaration shall have the force and effect of a final judgment or decree." Under Sec. 1748, R. S. Mo. 1939, it is clear that Appellant's Sheriff's Deed is a BAR against all persons interested in the premises.

Respectfully submitted,

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CE 1-1859,
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APPENDIX 1.

Supreme Court Judgment, December 14, 1959.

Appeal From the Circuit Court of the City of St. Louis.
Honorable David J. Murphy, Judge.

In this suit to determine title to real estate located in the City of St. Louis the plaintiff has appealed from a judgment that she had no title or interest in the property. This is the second appeal in this proceeding. See Evans v. Brussel, Mo. Sup., 300 S. W. 2d 442.

Plaintiff purchased the property herein involved on December 24, 1936, at a sheriff's sale held pursuant to a special execution issued upon a benefit judgment previously entered in a condemnation suit to establish, open and widen a public highway. At that time general taxes assessed against the property for all years back to and including 1930 were delinquent and unpaid. The Jones Munfer Act, Laws of Missouri, 1933, pp. 425-449 (see now Chapter 140, Title 10, R. S. Mo. 1949, V. A. M. S.), was then applicable to the City of St. Louis. The property was advertised and offered for sale for delinquent taxes for the third time on November 1, 1937. It was purchased by the City of St. Louis and the collector issued certificate of purchase number 1482. Plaintiff does not challenge the validity of that sale because of alleged insufficiency of the purchase price. The plaintiff, nor anyone else, redeemed the property within the statutory period for redemption, and on September 1, 1941, the collector executed and delivered his deed to the City of St. Louis.

In her petition, which was not amended subsequent to the previous appeal, plaintiff alleged that she is the owner of the property in fee by virtue of the above referred to

sheriff's deed, but that the defendants, other than the City of St. Louis, claim some interest therein, and the City of St. Louis "may claim" that some title still remains in it by virtue of the above mentioned collector's deed based on certificate of purchase number 1482 which "the Circuit Court of the City of St. Louis had already declared to be null and void because of the improper description of the property in the advertisement." Plaintiff also alleged that the taxes for which the property was sold were returned delinquent in the names of Alfred and Kreszentia Brussel, but that at the time of the tax sale the sheriff's deed to her was of record and therefore the collector's deed shows that "there was no duly made assessment, nor due notice of publication, nor notice that her property was about to be taken." Plaintiff prayed that the court try, ascertain and determine the estates, title and interest of all the parties. The City of St. Louis filed an answer and also what it termed a cross-bill in which it alleged it was owner of the property by virtue of the collector's deed and that plaintiff and the other defendants had no interest therein. The City then prayed that the court try and determine the estates, title and interest of the parties and adjudge it to be the sole owner of the property. All other defendants defaulted.

The only evidence introduced by plaintiff at the trial consisted of a photograph of the property, a copy of the special execution issued on the benefit judgment upon which the sheriff's sale was based, a copy of the sheriff's deed to her, and pages 17, 18, 19 and part of page 45 of the transcript filed in this court in Evans v. City of St. Louis, 355 Mo. 790, 198 S. W. 2d 9. The City of St. Louis introduced the collector's deed issued to it and some oral testimony from an employee of the collector's office to show that the general taxes from 1930 to the time of the sale were delinquent and unpaid. Plaintiff admitted that she paid no taxes on the property at any time.

In Evans v. City of St. Louis, supra, plaintiff filed a suit in which Count 13 of the petition pertained to the property in question, and pages 17, 18 and 19 of the transcript contain the allegations of Count 13. In that suit plaintiff did not challenge the validity of the collector's deed to the City of St. Louis except on the basis that at the time of the tax sale she personally did not owe any taxes on the property and no valid assessment of taxes had been made because the property was not assessed in her name. The trial court dismissed Count 13, and eight other counts, because plaintiff refused to amend her petition to comply with what is now Section 140.600 (all subsequent statutory references are to R. S. Mo. 1949, V. A. M. S.). Plaintiff appealed, but the appeal was dismissed by this court. In that case, although admitting there was no occasion to do so, the trial court made certain "findings of law or fact," one of which was that "The sale of property in Count * * * 13 is invalid as to the City of St. Louis, and certificate of title [purchase?] * * * 1482 [is] void for bad description in advertisement in Daily Record." This is the item on page 45 of the transcript in that case which plaintiff introduced in evidence in this case. However, neither the collector's publication of notice of sale for delinquent taxes upon which the sale of November 1, 1937, was based nor certificate of purchase 1482 was offered in evidence in this case.

The trial court entered judgment that the City of St. Louis is vested with fee simple title to the property, and that plaintiff failed to establish any estate, title or interest in the property.

Plaintiff's points relied on in her brief are lengthy, rambling and difficult to understand, but a careful study of them indicates that she makes the following contentions:

Plaintiff first contends that she was entitled to a decree vesting title in her by reason of the opinion of this court

in the previous appeal in this case [300 S. W. 2d 442]. That contenton is without merit. In the previous appeal this court held no more than that her petition should not have been dismissed, but that after she had alleged that she had title to the property she was entitled to an adjudication of her existing title, and that if she had no title the trial court should so adjudge and decree. This the trial court did.

Plaintiff next asserts that the trial court erred in not finding that the special execution upon which the sheriff's sale to her was made was issued at the request of the City of St. Louis. Plaintiff states that "This shows that the City Attorney knew the source of appellant's title when he filed the affidavits [that] he did not." We fail to see how the failure to make this finding, assuming it was correct, could possibly have any bearing on the merits of this appeal.

The third point first deals with damages suffered by plaintiff, and in view of the judgment entered, damages to plaintiff cannot be an issue on this appeal. Plaintiff then asserts that the trial court erred in finding that she failed to establish any estate, title or interest in the property, but she assigns no reason for this contention except to say that the mandate in the previous appeal provided that the judgment dismissing her petition "was reversed and the cause remanded with the direction that Sec. 527.150 applies to those actions to quiet title, * * *." The trial court complied with the mandate and decided the case on its merits. There is nothing presented for decision by this point.

In what plaintiff has designated as her fourth point she first recites a part of her pleadings, and then asserts that the trial court erred "in permitting defendant City to file a collector's deed, from Joseph and Kreszentia Brussel to

the City of St. Louis, which showed on its face that it was based on Certificate of Purchase No. 1482, which had already been declared null and void * * * and which was not signed by the County Clerk as required by statute." The collector's deed was not from the persons named but was from the collector of the City of St. Louis. The certificate of purchase is not in evidence, and in Evans v. City of St. Louis, supra, the judgment was that count 13 of plaintiff's petition be dismissed without prejudice, and such judgment was not res judicata of any issue pertaining to the validity of the certificate of purchase, or of any voluntary statement made by the trial court concerning an issue not adjudicated. 50 C. J. S., Judgments, § 707; Couch v. Harp, 201 Mo. 457, 100 S. W. 9. The collector's deed was executed by the collector, witnessed by the comptroller and properly acknowledged. There was then, and is now, no county clerk in the City of St. Louis. As to the duties of the comptroller of said city in connection with "the sale of land for taxes" see Section 137.525. In addition as to this point plaintiff makes no assignment in her motion for new trial that the collector's deed was void because it was improperly or insufficiently executed.

Plaintiff's fifth point is lengthy, but the substance of it is that the sale for taxes to the City of St. Louis was improper because the taxes against the property for which the property was sold was assessed against Joseph and Kreszentia Brussel, and therefore she did not owe any taxes on the property. This contention is so obviously without merit that it justifies no extended discussion. See Section 137.170; State ex rel. McKee v. Clements, 281 Mo. 195, 219 S. W. 900; State v. Gomer, 340 Mo. 107, 101 S. W. 2d 57; and the comment in Evans v. Buente, Mo. Sup., 284 S. W. 2d 543.

The sixth point is that the trial court erred in finding that plaintiff's suit was barred by the three-year statute

of limitations when the deed was valid on its face because (1) it was not signed by the county clerk; (2) the certificate of purchase had been adjudged to be void; (3) the collector's deed "does not even contain appellant's name, but the name of 'Brussel,' the former owner"; and (4) plaintiff owed no taxes to the City of St. Louis on November 7, 1937, the date of the sale by the collector. Section 140.460 provides that the collector's deed shall contain a provision that the land was sold at public auction to the named purchaser "for the sum of ... dollars and ..... cents, being the amount due on the following described tracts or lots of land; returned delinquent in the name of G. H., for non-payment of taxes, * * *." Section 140.500 provides that the sale of lands for taxes "shall not be invalid on account of such lands having been listed or charged on the tax book in any other name than that of the rightful owner." Therefore, the use of the name "Brussel" in the collector's deed, which was the name in which the taxes for which the land was sold was returned delinquent, could not result in the collector's deed being void. Each of the other contentions above enumerated have previously been answered.

Plaintiff's seventh point is that the trial court erred in overruling her objection that "any questions going into the tax bills are immaterial, unless it relates to the plaintiff in this case." This is obviously without merit. "Each tract of land or lot shall be chargeable with its own taxes, no matter who is the owner, nor in whose name it is or was assessed. * * * [N]o error of omission in regard to the name of any person, with reference to any tract of land or lot, shall in anywise impair the validity of the assessment thereof for taxes." Section 137.170. See also Section 140.500 and Adams v. Smith, 360 Mo. 1082, 232 S. W. 2d 482. It was proper for the City of St. Louis to show the amount of taxes delinquent, and for what years, and for what delinquent taxes the land was sold.

The two remaining points are quite lengthy and contain several contentions previously ruled on. The only contention we can glean therefrom not previously ruled is to the effect that the sheriff's deed to plaintiff wiped out all the then existing general taxes, and therefore, no taxes were due when the collector sold the property for taxes on November 1, 1937 to the City of St. Louis. Plaintiff cites State ex rel. City of St. Louis v. Baumann, 348 Mo. 164, 153 S. W. 2d 31, but that case does not support her contention. In State ex rel. Buder v. Hughes, 350 Mo. 547, 166 S. W. 2d 516, a judgment for benefit special taxes was obtained but no execution was issued thereon. Later the land was sold under the Jones-Munger law for general taxes. Before a collector's deed was issued to the purchaser at the tax sale, the holder of the benefit judgment sought to revive it by scire facias. This court held that the purchaser at a sale foreclosing the State's superior lien for taxes acquires an interest superior to those holding inferior liens, and that while the execution sale based on the benefit judgment would wipe out any liens junior to the judgment lien, the purchaser at the execution sale would necessarily take subject to the superior rights of the certificate holder. In Morey Engineering & Construction Co. v. St. Louis Artificial Ice Rink Co., 242 Mo. 241, 146 S. W. 1142, 40 L. R. A. (N. S.) 119, Ann. Cas. 1913C 1200, it was held that real estate tax liens are superior and prior to all other liens, including the lien of special taxes for improvements. There can be no question but that when plaintiff purchased the property on December 24, 1936, and received the sheriff's deed what title she acquired was subject to the lien for general taxes.

The City of St. Louis filed a motion to dismiss the appeal for failure on the part of the plaintiff to comply with Supreme Court Rule 1.08, and we would be entirely justified in taking the requested action. However, in a lenient exercise of discretion we have disposed of the appeal by ruling

on the merits of the contentions of plaintiff insofar as we have been able to determine those contentions.

The judgment is affirmed.

Alden A. Stockard,
Commissioner.

Bohling, C., concurs.

Barrett, C., concurs.

Per Curiam: The foregoing opinion by Stockard, C., is adopted as the opinion of the Court.

All concur.

APPENDIX 2.

Motion to Transfer to Court En Banc and Suggestions in Support Thereof and or Motion for a Rehearing.

Comes now appellant and moves that this suit be transferred to the COURT EN BANC, or if unwilling to do this, to grant her a rehearing from a ruling that the Collector's Tax Deed is adequate to convey fee simple title acquired by appellant from THE CITY by sheriff's deed, back to THE CITY, and so absolve them from payment of about $28,500 due Appellant as reimbursement for money expended, and damages due her for trespass, and the total destruction of her property, for the following reasons:

1. The trial Court has found that all the defendants except The City have defaulted. Evidence shows that the property, the subject of this suit, was formerly seized by the CITY to enforce the payment of a judgment of October 16, 1930 (See advertisement in Sheriff's Deed, Pl's Ex. 4, Tr. 33). It was sold to appellant December 24, 1936, and it conveyed fee simple title to her as of that date. Appellant believes the Supreme Court should confirm this much of the trial Court's decision. The validity of the Sheriff's deed nor the interpretation of the CONTRACT therein between the Appellant and THE CITY is not an issue in this appeal as there has been no complaint by Respondent. The POINT AT ISSUE is the Supreme Court's affirmance of the trial court's ruling that the **Collector's Tax Deed** (Respondent's Ex. A, Tr. 46) **conveyed Appellant's title to THE CITY** (Tr. 67) with the resulting ruling that appellant "fails **to establish any estate, title, rights, interest, claims, liens and demands in and to SAID real estate,**" thus depriving her of any reimbursements for money expended on it, or damages for trespass, and assessing all costs against her, charging her property as described in

the Sheriff's deed for the debt for delinquent taxes due from the Brussels and freeing it of any liens allowing nothing for cutting down her tree (Ex. 2, Tr. 27).

THE COLLECTOR'S TAX DEED SHOWS ON ITS FACE THAT IT CANNOT CONVEY APPELLANT'S TITLE TO THE CITY.

Under THE LAW OF CONTRACTS, Sec. 3354, R. S. Mo. 1939, provides:

> "No action shall be brought—to charge any person upon any special promise to answer for the debt, default—of another person,—or upon any contract made for the sale of lands, tenements, hereditaments, or an interest in and concerning them—for a longer time than one year—unless the agreement upon which the action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person by him thereto lawfully authorized, and no contract for the sale of lands made by an agent shall be binding upon the principal, unless such agent is authorized in writing to make said contract."

Sec. 3351, R. S. Mo. 1939, provides:

> "All parts of any contract or agreement hereinafter made or entered into which either directly or indirectly limit or tend to limit the time in which any suit or action may be instituted, shall be **null and void.**"

Under DAMAGES FOR TRESPASS, Sec. 3681, R. S. Mo. 1939, provides:

> "If any person shall cut down, injure or destroy or carry away any tree placed or growing for use, shade or ornament, or any timber,—being or growing on the land of any other person, or shall—or shall

carry away—material being a part of the realty,—or knowingly break the glass or any part of it in any building not his own, the person so offending shall pay to the party injured, treble damages."

As a municipal corporation is not liable for the lawful and authorized acts of its agents, the COLLECTOR'S TAX DEED must show affirmatively on the face of the deed that it conveyed appellant's **title to THE CITY** from appellant's fee simple **title from THE CITY**, acquired under her Sheriff's deed. This requires an EXAMINATION of THE CONTRACT between the two parties to this suit, as shown by the Collector's Deed (The Respondent CITY'S Ex. A, Tr. 46).

The SUBJECT of the suit is the property as described in the SHERIFF'S DEED and the AMOUNT OF MONEY due appellant from Respondent for illegal acts they committed relating thereto.

The description of the property in the **trial court's judgment** is the same as appears in the Sheriff's Deed and hence would convey appellant's property (Tr. 67) unless overruled by the Supreme Court because of the fact that **it does not correspond** with the **description of the property** set out **in the Collector's deed**, to-wit: One description being

"A parcel of land in City Block 466-E fronting 25 feet on Ninth Street by a depth of 100 feet."

From this description one could not know if the lot was on the NE, SE, NW or SW corner, or if indeed it was at the corner of Ninth and Rutger. The description as shown in an advertisement of a tax sale in the Daily Record showed:

"LOTS 819, 20, 21 in C. B. 466-E."

This may be found in the Transcript in Cause 39,785, page 41, item 7, No. 13. It was on the basis that the Court found,

"The sale of property in Count 13 is invalid as to the City of St. Louis, and CERTIFICATE NO. 1482 is VOID for bad description in advertisement in Daily Record" (Tr. Cause 39,785; Tr. p. 45, Item 4).

No. 1482 is on the FACE OF THE COLLECTOR'S DEED.

Another description of the property involved in this suit is given in the Collector's deed, similar to that in Appellant's Sheriff's deed, and in the court judgment, but after mentioning Lots 19 to 22, it fails to say BOTH INCLUSIVE; and after stating by a depth Westwardly it fails to state BETWEEN PARALLEL LINES. These omissions invalidate the description.

In sustaining the COLLECTOR'S DEED, the judgment must describe the property as described in the Collector's Deed. It is therefore void as to appellant's property and should be so declared by the Supreme Court on the evidence presented by Respondent, The Collector's Deed, Exhibit A.

At this point and without further discussion, the Supreme Court in line with the facts presented in justice to Appellant should reverse its finding that Collector's Deed was valid to convey Appellant's property and should now be concerned with the value of damages inflicted upon her which may be determined by a study of the photograph (Apl. Ex. 2, Tr. 27, and Point III, p. 13, in Appellant's Brief).

However, appellant will endeavor to take up the items discussed in the Commissioner's Opinion of December 14, 1959. Appellant asks that the Court be patient as Respondent continued to try the case under the provisions of the Jones-Munger law to set aside a tax deed, while appellant, as authorized by the Mandate of the Supreme Court, continued to try her case as a suit in equity under Sec. 1684, R. S. Mo. 1939, Sec. 527.150, R. S. Mo. 1949.

V. A. M. S. There are many errors of fact in the Supreme Court's findings, contrary to the evidence produced, which resulted in errors of law which appellant will endeavor to point out.

1. This is not just a suit to determine title only as stated in the first line of the Supreme Court Judgment. Transcript 2 shows the heading of her petition to be PETITION TO DETERMINE AND QUIET THE TITLE. The prayer in her Petition (Tr. 6) "to try, ascertain and determine the estates, title and interest and to hear and finally decide and determine any and all rights, claims, interest and demands . . . . effecting the real property, etc." The Sheriff's Deed (Pl. Ex. 4, the second page of Sheriff's Deed, Tr. 33) recites it was conveying to her not only the title, etc., but all rights, privileges and appurtenances belonging thereto." The heading of her petition is identical with that of Sec. 1684, R. S. Mo. 1939, under which the case was brought.

This is the third appeal in appellant's legal effort to quiet the title and get damages due her for the destruction of her property. (See INDEX of Brief, being Evans v. City of St. Louis, Cause 39,785; Evans v. Brussel, City of St. Louis, et al., Cause 45,724, and Evans v. Brussel, City of St. Louis, et al., Cause 47,456.) Previously, the CITY had acquired the property under a Court judgment (Item 1 in the Index, Cause No. 71,527-B of the St. Louis Circuit Court entitled City of St. Louis v. Gottschall, **Brussel et al.** Under the cases of K. C. Ex. v. Kansas City, 174 Mo. 425, and Williams v. City of Hayti, 194 S. W. 470, "A CITY and its officers and agencies are bound by the judgment in an action to which it is a party or privy." The SHERIFF'S deed shall be a bar against all persons interested in such premises and against all persons claiming from such parties or either of them "as provided by the." Under this section the CITY sold to Evans and is bound by Sheriff's deed to her.

The Supreme Court Opinion stated as a fact that the property was advertised and offered for sale for delinquent taxes for the third time November 1, 1937 and was purchased by THE CITY, and the Collector issued certificate of purchase No. 1482, disregarding the failure of the City to assess the land—by plats—as provided by Sections 10,971, 10,972 and 10,973, which imparts notice to the owner that it is assessed and liable to be sold for taxes, and the finding of the Circuit Court that the certificate of purchase No. 1482 was void to convey any title to The City because of the bad description in the Daily Record in the alleged advertisement of sale. The Jones-Munger law was not followed by the CITY. Appellant's position is that NO LEGAL SALE OF HER PROPERTY WAS EVER HELD.

The said Collector's tax deed is not adequate to support a judgment of fee simple title in the CITY. Under Sec. 10,996, R. S. Mo. 1939, the Assessor shall perform the duties now performed by the County Clerk in extending taxes on the assessment books and such other services pertaining thereto. In the instant case, although the Sheriff's Deed was recorded in March, 1937, it was never entered on the Plat Book as a single piece of property, nor was her name, Evans, entered as the new owner. The said Collector's Deed does not show the proper description of her property, either in the advertisement of sale nor in the deed itself where two efforts to describe it appear, supra. The Supreme Court has also disregarded the previous ruling of Judge Koerner that "The sale of property in Count 13 is INVALID AS TO THE CITY OF ST. LOUIS and THE CERTIFICATE OF PURCHASE 1482 VOID." This was the identical property (Tr. 5 and 43, being Pl. Ex. 5, pages 17, 18, 19 and 45 of the Tr. in Cause 39,785) as set out in the original petition. THE SAID COLLECTOR'S DEED UNDER THE FACTS AND THE LAW IS VOID. This finding was in response to Appellant's Motion for a

Finding of Fact and Law as provided in the Equity Statute under the DECLARATORY JUDGMENT ACT, R. S. Mo. 1939, Art. 14, Sec. 1126, "Courts shall declare rights, status and other legal relations . . . and such declaration shall have the force and effect of a FINAL JUDGMENT OR DECREE." There was no appeal. It has the force of a final judgment and has become the law in this case. Neither the Circuit nor the Supreme Court in quieting title has any jurisdiction to set this FINAL JUDGMENT aside. It is res adjudicata. The said collector's deed based on certificate of purchase 1482 has already been found VOID to transfer any of appellant's Title under the Sheriff's Deed to THE CITY. It might have prevented so much litigation if the City Councilor had paid any attention to the Court's final judgment, or had the City Officials performed the ministerial duties precedent to the assessment and collection of tax as from appellant.

"A municipal corporation is liable for negligence arising from the exercise of the privilege granted, or for neglect to perform a ministerial duty." Soulard v. City of St. Louis, 36 Mo. 546; Hickerson v. City of Mexico, 58 Mo. 61, states where land is taken by a Corporation and applied to its own use, the entire value of the land is the measure of damages. A municipality when acting upon matters within its general corporate powers will be held liable for its acts, although done in an unauthorized manner. Cook v. Kansas City, Nov., 1948, 358 Mo. 298. It found a verdict of $18,000.00 was not excessive. In Williams v. Sands, 158 S. W. 47, 251 Mo. 147, states, "A tax deed void on its face does not set in motion the 3 year statute of limitations prescribed by V. A. M. S., sec. 140.590, for recovery of land sold for taxes. In Bell v. Ham, 173 S. W. 744, 188 Mo. App. 71, "A legal owner not paying taxes for 40 years or more may recover against a claimant under a tax sale, invalid because of the failure to bring the suit against the proper person.

"SEIZURE OF PROPERTY BY THE STATE UNDER PRETEXT OF TAXATION WHEN THERE IS NO JURISDICTION OR POWER TO TAX IS SIMPLE CONFISCATION AND DENIAL OF DUE PROCESS OF LAW UNDER AMENDMENT 14 OF THE U. S. CONSTITUTION decided in Miller Bros. Co. v. State of Md., 74 S. Ct. 535, 347 U. S. 340. See key 319 on Confiscation.

"A valid assessment has invariably been held an essential prerequisite to the lawful exercise of the powers of taxation, State ex rel. Thompson, 149 Mo., l. c. 445; Under Sec. 137.335, R. S. Mo. 1945, p. 1859, par. 17, it was the duty of the Assessor to record daily transfers on the Plat Book. The City admits this was never done in the case at bar. Following is an agreed statement of fact signed by attorney for THE CITY, S. R. Redmond (See Tr. 37, item XIII in Cause 39,785)." The property was shown on the Assessor's books as assessed in the name of Joseph and Kreszentia Brussel from 1930 to 1943, and in the name of the City of St. Louis in 1944, the Collector's Deed dated September 17, 1941, Daily No. 66. The Assessor's copy of deeds recorded shows Sheriff's Deed recorded March 22, 1937 to A. Evans. Tax suit No. 15,033 v. Brussels, filed December 22, 1931 was not dismissed although the City had sold the property to appellant. The land was sold to appellant without dismissing tax suits against the former owners, Brussel et al., for taxes from 1926 to 1929, inclusive. THE CITY merely smeared appellant's character by asking why she didn't pay her taxes. It must be understood that by the aforesaid facts, there was a collusion between the Collector's Office and the Assessor's Office to prevent her from paying taxes at any time because of the violation of the statutes by city officials.

The advertisement of sale is the basis on which both Deeds were issued. Sec. 3354, R. S. Mo. 1939, requires that all provisions of a legal sale be written in the contract.

Under Art. 2, Sec. 15 of the Missouri Constitution, the General Assembly shall not pass laws impairing the obligation of a contract. The superiority or inferiority of liens are not issues in the case at bar. The liens, as many as there were, as shown by the defendants in this suit, have now all resulted in the Sheriff's and Collector's Deeds.

How CAN THE COURT FIND THAT APPELLANT, VESTED WITH TITLE ACQUIRED BY SHERIFF'S DEED AT ONE CITY SALE, BE DIVESTED OF IT BY A COLLECTOR'S DEED, VOID ON ITS FACE AND SO ADJUDGED, OF ANOTHER CITY SALE, WITHIN TEN MONTHS, WHEN UNDER Sec. 1748, R. S. Mo. 1939, THE SHERIFF'S DEED WHEN DULY APPROVED AND RECORDED, SHALL BE A BAR AGAINST ALL PARTIES TO THE SUIT, THE CITY AND THE BRUSSELS?

The City officials became confused with the difficult financial conditions of the Country resulting in the "Depression" of 1929 to 1932, the scarcity of money, and the piling up of liens to be collected. The question of PRIORITY OF LIENS became important. There was a difference of Opinion between the City Collector, Mr. Wm. F. Baumann, and the City of St. Louis resulting in a lawsuit entitled State ex rel. Baumann v. The City of St. Louis, 348 Mo. 164, 153 S. W. 2d 31, wherein the Supreme Court ruled (Tr. 51, Testimony of Harry Budde, Deputy Collector in charge of back taxes), "There was no such thing as a superior, or inferior, lien on general taxes. The City won that case in this way, that we had to give the Deed, but they did not have to pay the taxes, because they were exempt." The CITY had contended that appellant bought at the sale of an inferior lien, and hence she was liable to all other liens for general taxes. Under the Baumann case the property had been sold by the CITY wiping out all other liens by Sheriff's Deed to Evans. They were with-

out any jurisdiction to conduct the so-called third sale for back taxes, at which they had secured the void certificate of purchase, and void Collector's Deed. It was THE CITY'S duty to introduce the Certificate of Purchase, if necessary, as it was a part of their files. From appellant's point of view, it was enough to enter No. 1482 on the Collector's Deed. Appellant's Sheriff's Deed recites,

> "do hereby assign, transfer and convey to the said Anne M. Evans all the rights, title, interest, claim, estate and property set out in Item 778 of the Judgment."

The advertisement of sale found in the deed (Pl's Ex. 4, Tr. 33), states the contract on which appellant made her bid and purchased the property. There is no mention of it being subject to any delinquent taxes of the Brussels. Had it been sold under this condition she would not have purchased it. The Sheriff's deed she received was acknowledged before the Hon. Ernest Oakley and endorsed by the Circuit Clerk, Mr. Sam Priest, "to convey all the rights, title, interest, claim, estate, with privileges and appurtenances thereto belonging." One of the most important privileges appellant acquired is the right to have her name taken from the recorded Sheriff's Deed by the City Assessor (who takes the place of the County Clerk outside the City) and transferred to the Plat Book as required by law, supra, for the legal assessment of her taxes, which under the Statute becomes the basis of legal notice to her. Unless a property owner's name and description of her property in one piece is on the plat book as required by law she fails to receive many necessary legal notices. The Supreme Court judgment should include a statement that the City be required to put these items on the Plat Book.

Appellant brought her suit as aforesaid under Sec. 4654, R. S. Mo. 1939. THE CITY claimed she had to bring

it under a section of the Jones-Munger Law to set aside a Tax Collector's Deed which they held. On the back of the deed which they introduced in evidence, it was certified to be from Joseph and Kreszentia Brussel by Collector to THE CITY, for back taxes from 1930 to 1936. The Judge was verbally informed by THE CITY ATTORNEY that this was a deed to appellant's property, although the descriptions of the property in the deed was inadequate as stated above, and that it was because appellant failed to pay her taxes; and the Circuit Judge found that the said Deed was adequate to convey fee simple title to THE CITY free of all liens and claims. In his judgment, however, he put in the description of the property given in appellant's Sheriff's Deed, but NOT THE DESCRIPTIONS IN THE CITY'S SAID COLLECTOR'S DEED.

Appellant believes she should be allowed to have this case transferred to the Court en banc to correct this judgment affirmed by the Supreme Court, Division 2, and an adequate consideration of the EXTENT AND AMOUNT DUE FOR THE DAMAGES TO HER PROPERTY by THE CITY be determined: that the judgment that she has no title or interest in the property be reversed because predicated upon a worthless Collector's Deed, (1) bearing two conflicting inaccurate descriptions of her property adequately described in her Sheriff's Deed; (2) issued on a Certificate of Purchase, No. 1482, which has been found by a court of competent jurisdiction to have been invalid, because the description of the property in the advertisement of the Collector's sale was inadequate for anyone to know where the property was located, or to whom it belonged; (3) because the Collector's Deed was not before the Court in the case of Evans v. Brussel, The City of St. Louis, et al., 300 S. W. 2d 442, where it was found that under Section 1684 that both parties are entitled to an adjudication of their respective deeds and only found it

was error to enter judgment of dismissal under this section; (4) because under Mathis v. Melton, 293 Mo. 134, 283 S. W. 806, the Missouri Supreme Court has found that in a suit under this section tried by the Court conclusions of fact reached upon substantial evidence are binding upon the Supreme Court. (See Appellant's Petition, Tr. 5, 4th paragraph.) Also in the Transcript, Cause 39,785, page 45, in Evans v. City of St. Louis, "Certificate No. 1482 null and void"; (5) because the CITY COLLECTOR'S DEED shows on its face that it was issued on the said void Certificate of Purchase; (6) because of the failure of the City's ministerial officers to comply with the assessment laws of the State.

Suggested Judgments.

This suit was brought under Sec. 1684, R. S. Mo. 1939. The Court finds that the City has no right, title or claim to the property as described in Plaintiff's Petition (Tr. 3).

That the other defendants being duly called came not but made default;

That appellant acquired fee simple title to the title of the property described in Appellant's Petition (Tr. 3) free of all claims except the legal claim for general taxes, when her recorded deed shall have been entered on the Tax Assessor's Plat Book by the City Assessor. The Court further awards her $10,000 damages for total destruction of her property, building material and tree hauled away and the Costs of Court,

or

The Court finds that the City of St. Louis has seized plaintiff's property, under the pretext of taxation, when it had no jurisdiction or power to tax without having complied with the Assessment Laws of the State, Secs. 10,971-23, R. S. Mo. 1939, in violation of the Due Process provi-

sions of the State and U. S. Constitution and the decision of Miller Bros. v. Md., 347 U. S. 340. As the City of St. Louis desires a fee simple title, the Court awards Appellant $25,000.00 as the entire value of her property and damages. (See Hickerson v. City of Mexico, 58 Mo. 61.)

Respectfully submitted,

ANNE M. EVANS,
913 North Twelfth Boulevard,
St. Louis 1, Missouri,
CE 1-1859,
Attorney pro se.

Appellant states that she has this 26th day of December, 1959, sent by registered mail, a copy of this MOTION TO TRANSFER TO COURT, EN BANC, and SUGGESTIONS IN SUPPORT THEREOF, and, or, MOTION FOR A REHEARING addressed to Mr. Freeman L. Martin, Assistant City Counselor, Room 234, City Hall, St. Louis 1, Missouri, Attorney for Respondent, the City of St. Louis.

APPENDIX 3.

Appellant's Jurat.

City of St. Louis, } ss.
State of Missouri, }

Personally appeared Miss Anne M. Evans of the City of St. Louis, State of Missouri, Appellant in the above-entitled action, and made oath to the truth of the matter contained in the complaint therein before me.

Anne M. Evans,
Plaintiff-Appellant.

O. A. Harris,
Notary Public.

My term expires June 9, 1962.

(Seal)